IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

CRL.A.No. 577 of 1999()

AGAINST THE JUDGEMENT IN CRA.292/1998 Dated 17/03/1999 VTH ADDL.SESSIONS COURT, ERNAKULAM. ST.1083/1996 of JUDICIAL FIRST CLASS MAGISTRATE COURT I.

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APPELLANT: RESPONDENT/ COMPLAINANT

SOMAN, S/O.KRISHNAN,
KALATHIPARAMBIL, MALIPURAM,
ELANKUNNAPUZHA NOW RESIDING
AT KALATHIPARAMBIL , OCHANTHURUTH P.O.,
KOCHO 682 508.

BY ADV. SRI.B.RAMACHANDRAN

RESPONDENTS: APPELLANTS/ACCUSED AND STATE
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1. **SHAJI, S/O.PAILEY, ALUNKAPARAMBIL, MURUKUMPADAM, PUTHUVAIPU.**

2. **STATE OF KERALA, REP.BY PUBLIC PROSECUTOR , HIGH COURT OF KERALA, ERNAKULAM.**

BY ADV. SRI.T.H.ABDUL AZEEZ
PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

CRL.A NO. 577 OF 1999

JUDGMENT

Dated 9th July, 2007.

The appellant is the complainant in the proceedings initiated for the offence under section 138 N.I.Act. The trial court convicted the accused. But in appeal by the accused, the appellate court reversed the order of the court below and acquitted the accused. The above finding is called in question herein.

2. The complainant's case is that the accused borrowed an amount of Rs.15,000/- from the complainant and for repayment of the amount, the accused issued a cheque dated 15-12-95 which when presented, got dishonoured for want of funds in the account of the accused. Lawyer notice sent was replied to raising false allegations.

3. The evidence adduced in the matter consisted of the testimony of PWs 1 and 2 and Exts.P1 to P6. The accused himself got examined as DW-1 and got marked Ext.D1 wherein according to the accused, the entries as to the payments are

made.

4. The appellate court mainly noted the fact that in the impugned cheque, the year mentioned is evidently altered with respect to the figure `6'. The court has also relied on the answer to the question to DW-1 in the cross examination that except the figure `6', the rest has been written by the accused. Counsel for the appellant/complainant has stressed on the inconsistent versions in the reply notice and in the evidence of DW-1. In the reply notice he had contended that Rs.10,000/- was borrowed and the entire amount has been repaid whereas in the examination of DW-1 he has stated that out of the amount borrowed, more than Rs.6000/- has been paid back. He has also stated that as per Ext.D1 card, a total amount of Rs.6350/- has been paid. Although he has contended that he has issued a blank cheque, when cross examined DW-1 in answer to the question has replied that all entries except the date has been written by him.

5. All the same, I find that as noted by the appellate court, the figure `6' in Ext.P1 has been altered to `5' which is explicit on examination of Ext.P1. The dishonour memo also mentions that the cheque is post dated although PW-2 bank manager has stated that it was a mistake. The case has to be decided on the basis of the case set up by the complainant and not by examining the inconsistencies in the version of the accused.

In the circumstances, I find no reason to deviate from the findings of the appellate court. The same is confirmed. The appeal is dismissed.

K.R.UDAYABHANU, JUDGE.

Kvm/-

K.R.UDAYABHANU, J.

CRL.A. NO.577 OF 1999

JUDGMENT

9-7-2007.